

Chapter 3.08 SYSTEM DEVELOPMENT CHARGES

3.08.010 Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments that create the need for or increase the demands on capital improvements.

(Ord. 199-1999 § 1)

3.08.020 Scope.

The system development charge imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development.

(Ord. 199-1999 § 2)

3.08.030 Definitions.

As used in this chapter:

"Capital improvements" means facilities or assets used for:

1. Water supply, treatment and distribution;
2. Wastewater collection, transmission, treatment and disposal;
3. Drainage and flood control;
4. Transportation; or
5. Parks and recreation.

"Development" means ~~conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access~~ all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities, any building permit resulting in increased usage of capital improvements, and any new connection or increased size connection for a capital improvement. Development includes the redevelopment of property. Development also includes improved open areas such as plazas and walkways but does not include natural geologic forms or unimproved lands.

"Improvement fee" means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 3.08.040 of this chapter.

~~"Land area" means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right of way or easement subject to a servitude for a public street or scenic or preservation purpose.~~

~~"Owner" means the owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.~~

"Parcel of land" means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

"Permittee" means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

"Qualified public improvements" means a capital improvement that is:

1. Required as a condition of development approval;
2. Identified in the plan adopted pursuant to Section 3.08.080 of this chapter; and either
3. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
4. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
5. For purposes of this definition, "contiguous" means in a public way which abuts the parcel.

"Reimbursement fee" means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 3.08.040 of this chapter for which the city council determines that unused capacity exists.

"System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision, expedited land use division or limited land use decision.

(Ord. 199-1999 § 3)

3.08.040 System development charge established.

- A. System development charges shall be established and may be revised by resolution of the council. The resolution shall set the amount of the charge not to exceed the amount calculated in the methodology adopted pursuant to Section 3.08.050 except when indexing under the provisions of Section 3.08.080(C), the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.
- B. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is imposed upon all development within the city, upon the act of making a connection to the city water or sewer system within the city, and upon all development outside the boundary of the city that connects to or otherwise used the sewer facilities, storm sewers, or water facilities of the city.

(Ord. 199-1999 § 4)

3.08.050 Methodology.

- A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.
- C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the council.

(Ord. 199-1999 § 5)

3.08.060 Authorized expenditures.

- A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- B.
 - 1. ~~1.~~ Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development.
 - 2. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to Section 3.08.080 of this chapter.
- C. Notwithstanding subsections (A) and (B) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

(Ord. 199-1999 § 6)

3.08.070 Expenditure restrictions.

- A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

(Ord. 199-1999 § 7)

3.08.080 Improvement plan.

A. The council shall adopt a plan that:

1. A.—Lists the capital improvements that may be funded in whole or in part with improvement fee revenues;
2. B.—Lists the estimated cost and time of construction of each improvement; and
3. C.—Describes the process for modifying the plan.

In adopting this plan, the council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.

B. The city council may modify such plan and list at any time. If a system development charge will be increased by a proposed modification to the list to include a capacity increasing public improvement, the city council will:

1. At least thirty (30) days prior to the adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to Section 3.08.120 of this ordinance;
2. Hold a public hearing if a written request for a hearing is received within seven (7) days of the date of the proposed modification.

C. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on:

1. A change in the cost of materials, labor, or real property applied to projects or project capacity as set forth on the list adopted pursuant to Section 3.08.080(A) of this ordinance;
2. The periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:
 - a) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property, or a combination of the three;
 - b) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
 - c) Incorporated as part of the established methodology or identified and adopted by the city council in a separate resolution.

(Ord. 199-1999 § 8)

3.08.090 Collection of charge.

A. The system development charge is payable upon issuance of:

1. A building permit;
2. A development permit;
3. A development permit for development not requiring the issuance of a building permit;
4. A permit or approval to connect to the water system;
5. A permit or approval to connect to the sewer system; or
6. A right-of-way access permit.

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- B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.
 - C. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
 - D. The city manager or designee shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system of the city is made.
 - E. The city manager or designee shall not issue such permit or allow such connection until the charge has been paid in full, unless an exemption is granted pursuant to Section 3.08.100 of this chapter.

(Ord. 199-1999 § 9)

3.08.100 Exemptions.

- A. Structures and uses established and existing on or before the effective date of the ordinance codified in this chapter are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this chapter upon the receipt of a permit to connect to the water or sewer system.
- B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.
- ~~D. A project financed by city revenues is exempt from all portions of the system development charge.~~

(Ord. 199-1999 § 10)

3.08.110 Credits.

- A. When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this section.
- B. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit ~~shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and~~ shall only be for the improvement fee charged for the type of improvement being constructed.
- C. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular

development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than sixty (60) days after acceptance of the improvement by the city.

- D. When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- E. Notwithstanding subsection D and this subsection, when establishing a methodology for a system development charge, the city may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, ~~or a credit based upon any other rationale the council finds reasonable.~~
- F. Credits shall not be transferable from one development to another.
- G. Credits shall not be transferable from type of system development charge to another.
- H. Credits shall be used within ten (10) years from the date the credit is given.

(Ord. 199-1999 § 11)

3.08.120 Notice.

- A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least ~~forty-five~~^{ninety} (45⁹⁰) days prior to the first hearing to adopt or amend a system development charge. The methodology supporting the adoption or amendment shall be available at least ~~thirty-sixty~~ (30⁶⁰) days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the city.
- B. The city may periodically delete names from the list, but at least thirty (30) days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

(Ord. 199-1999 § 12)

3.08.130 Segregation and use of revenue.

- A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 3.08.060 of this chapter.
- B. The ~~appropriate city official~~^{city manager or designee} shall provide the city council with an annual accounting, ~~based on the city's fiscal year~~^{by January 1 of each year}, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account ~~in the previous fiscal year~~.

(Ord. 199-1999 § 13)

3.08.140 Appeal procedure.

- A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city manager or designee describing with particularity the decision of the city manager or designee and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.
- B. ~~Appeals of any other decision required or permitted to be made by the city manager or designee under this chapter must be filed within ten (10) days of the date of the decision.~~
- ~~C.~~ After providing notice to the appellant, the council shall determine whether the city manager or designee's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.
- ~~D.~~ A legal action challenging the methodology adopted by the council pursuant to Section 3.08.050 shall not be filed later than sixty (60) days after the adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to ORS 34.100, and not otherwise.
- D. Appeals of any other decision required or permitted to be made by the city manager or designee under this chapter must be files within 10 (10) days of the date of the decision.

(Ord. 199-1999 § 14)

3.08.150 Prohibited connection.

No person may connect to the water or sewer systems of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

(Ord. 199-1999 § 15)

3.08.160 Penalty.

Violation of Section 3.08.150 of this chapter is punishable by a fine in an amount double the original fee.

(Ord. 199-1999 § 16)

3.08.170 Construction.

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this chapter.

(Ord. 199-1999 § 17)

3.08.180 Classification.

The city council determines that any fee, rates or charges imposed by this chapter are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

(Ord. 199-1999 § 19)

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